

Workers' Compensation Advisory Committee (WCAC)

Meeting Minutes

March 16, 2006

Committee Members:

Business Representatives: Kris Tefft, Association of Washington Business; Carolyn Logue, NFIB (for John Warling); Mike Sotelo, W. G. Clark Construction Company

Labor Representatives: Owen Linch, Joint Council of Teamsters No 28; Dave Johnson, Washington Building & Construction Trades Council; Robby Stern, Washington State Labor Council, AFL-CIO; Ellie Menzies, Service Employees State Council, Self Insured Workers' Representative

Self Insured Employer's Representative: Katrina Zitnik, Costco Wholesale

Ex Officio Member: Tom Egan, Board of Industrial Insurance Appeals

Chair: Bob Malooly

Recorder: Gwen Reed

Absent Committee Member: Jon Warling, Mon-Jon Orchards

Presenters: Bob Malooly, Tom Egan, Catherine McDonald, Vickie Kennedy, Rich Wilson, Roy Plaeger-Brockway, Bill Vasek, Christine Swanson, Gary Franklin, MD

Guests: Nancy Dicus, Janice Camp, Vicky Smith; Jeannie Gorrell, Tammie Hetrick, Amy Brackenbury, Jim Hedrick, Tom Kwieciak, Clif Finch, Jan Gee, Jennifer Strus, Amy Evans, Jill Reinmuth, Bill Struyk, Rick Slunaker

L&I Staff: Christine Swanson, Cheri Ward, Barb Collier, Jean Vanek, Sandy Dziedzic, Diane Doherty, Lianne Rolle, Hal Stockbridge, Roy Plaeger-Brockway, Gary Weeks, Mike Ratko, Vickie Kennedy, Joshua Ligosky, Robert Malooly, R. T. Nelson, Judy Schurke, Bill Vasek, Cynthia Harris.

1. Update: Employer Services Program Manager – Bob Malooly

Bob announced that Kathy Kimble would be retiring in April and this would be her last WCAC meeting. At the present time Insurance Services is recruiting for an Employer Services Program Manager to replace Kathy if anyone knew of

someone who would be interested in the position. A new manager should be selected by our next meeting.

2. Review and Approval of December 5, 2005 Meeting Minutes – Bob Malooly

Minutes were approved as written.

Bob reminded everyone that the meeting was being recorded. Kris Teft asked where the tape from the December 5, 2005 meeting was located. Staff indicated they would look into the location of the tape.

Follow up: The tape was being stored in the files of Amy Brackenbury. The tape was received, copied and is now filed with the department as well.

Bob showed the committee one of the Customer Feedback Videos that was shown at the all staff presentation the week of March 7, 2006. Bob is planning on showing another video from a Physician at the next WCAC meeting.

3. Board of Industrial Insurance Appeals Update – Tom Egan

Tom presented updated figures for the Industrial Appeals. There were no significant changes from last quarter.

4. ORCA Project – Catherine McDonald & Kim Sullivan

Catherine reviewed release dates and updated the committee on how things were working. Response to the system has been positive.

Committee members were interested in the system's security and expressed concern that someone may have access to a claim that should not have access.

Catherine and Bob reiterated to business that security was a priority when the system was designed. Catherine will provide an overview of the system's security at the next meeting. The overview will include a discussion of:

- System security
- Penalty for violating security
- Further discussion of TPA access and Retro association access
- Who has access
- Overview of system tracking

Tom asked if on line protests were considered in writing and how the on line appeal process works.

Catherine indicated that “yes” it has been confirmed with the Attorney General's office that a protest received on line is considered in writing. However, at the present time, appeals cannot be received on line.

Business wanted to know if there are fewer problems with the system shutting down.

Kim indicated that the issues that had been shutting the system down had been resolved and the system has not been down for several weeks.

Catherine outlined future plans for building five new imaging systems this biennium. One for self insurance, one for employer services, retro documents will be imaged, provider accounts and provider billing will have new imaging systems.

5. Healthcare Update – Roy Plaeger-Brockway

Roy discussed a pilot program that is in place to improve access to surgical care. There have been problems with access to orthopedic and neurosurgery in some areas of the state partly due to varying payment levels among health plans. The goal of the pilot program is to encourage quality providers to treat injured workers by offering incentives for use of best practices. A pilot program for orthopedics is currently underway at an office in Vancouver.

Business was interested in the type of monitoring controls that are in place to ensure that unnecessary surgeries aren't being performed just to get the incentives. Roy assured the committee that guidelines are in place and medical necessity is reviewed.

Labor wanted to know if self insurers in the Vancouver area have the ability to offer the same incentives and, if so, are they currently participating? Roy responded that they already have a large number signed up. Roy admitted that the department needs to do a better job of working with the self insurance community as the pilot progresses. Katrina asked Roy for a list of the self insurers who are currently participating.

Labor felt that there needs to be a clearer understanding of these programs. Roy will provide more details of these programs at the next meeting.

6. Vocational Services Update – Vickie Kennedy/Rich Wilson:

At the last WCAC meeting, improvements that could be made to the Vocational Rehabilitation System were discussed. At this time the WCAC has provided 4 names to Vickie Kennedy, 2 from business and 2 from labor, to be part of a group that will meet later this month to discuss the identified issues. Rich

indicated that we are currently focusing on what processes can be improved immediately and which will require statutory change.

We are improving outreach efforts by getting the word to internal staff, external voc people, community colleges, vocational tech schools, and community based resources. The website has detailed information about the initiative and we are receiving feedback through e-mail. We have also created a List-Serve that you can sign up for to receive information.

<http://www.lni.wa.gov/ClaimsIns/Providers/Vocational/WhatsNew/initiative.asp>

Claims over 90 days old are watched closely and appropriate action is taken at the appropriate time and not falling through the cracks.

Business wanted to know if the providers the program was talking to regarding education provided that service in Spanish since there is a large non-English speaking population in the state. Do they receive the same service as the English speaking population? Is information on the Web available in Spanish?

Rich will look into whether or not the community colleges, Voc Tech system have services available in other languages. At the present time, the List-Serv does not go out in Spanish and the Voc Website is not available in Spanish.

Agency staff explained that the department is actively taking a variety of steps to communicate with the Spanish speaking population: the department has a worker brochure that goes out with each first time loss check that is printed in Spanish; the claims system now flags injured worker claims when English is not the primary language so that correspondence is sent in Spanish; the department has also developed a flier in both Spanish and English that has been mailed to physicians educating them on how to work through the system.

Kim Contris, Assistant Director for Communications, indicated there is a real challenge in getting all legal aspects of the claim process in Spanish and committed to provide the committee with a comprehensive list of what we have done to communicate with our non English speaking customers at the next meeting.

Mike Sotelo indicated that he was the President of the Washington State Hispanic Chamber of Commerce and Latino Businesses and volunteered his assistance with developing communications in Spanish.

Business asked if every non-COHE claim is going through the early return to work process.

Rich answered "yes" and explained that COHE claims are flagged and they don't go to the ERTW program. ERTW staff respond quickly so that they are getting the claim at 21 days and they are helping the worker return to work, talking to the

employer and the doctor, etc. In cases where there is no return to work option, they are deciding whether or not to refer it out to private voc, and, in the cases where there are significant medical issues, they are sending it back to the claims manager. This process is being completed within 21 to 40 days. Claims are not held for very long since there are a lot of them coming in all the time. The idea is to quickly reconnect that employer with the worker and, if not successful, document your efforts and move on. It seems to be working really well, but we think we can do even better. About 250 claims a month are sent back and the claims manager will be taking the next action. We want to make sure those claims get the attention they need when they need it and don't fall through the cracks.

Business asked if there was a process for involving the early return to work people earlier in the process.

Bob responded "yes" if somebody comes in the door and they need voc we want to make sure they get it right away. The problem is that you can't blindly say that we are going to do voc early for everybody. British Columbia tried that and what was happening was they were trapping people that would otherwise have gone back to work on their own in the voc system. This led to increase increased time-loss durations and reduced employability of the worker.

7. Legislation Update – Christine Swanson

Christine asked the committee to let her know if they were interested in helping the agency implement any of the 16 bills that passed during the 2006 Legislative session that impact the department.

Sara Spiering, of Claims Administration, has been appointed the project manager for SHB 2537, Employer Reporting. Bob Malooly will be the executive sponsor for the Executive Steering Committee. Gary will be part of discussions and the committee will meet monthly regarding the implementation of the bill. Sara will provide an update on this bill at the May 30 meeting; on what will be needed from committee and where the department is going at that point.

Christine updated the committee on the Budget Proviso. SSB 6386 – L & I's portion – Pg 116 Line 9 – referred to Workers comp funds 608/609. The department will consult with the committee to come up with recommendations for adequate equitable and stable funding sources.

A presentation of how these funds are currently spent and allocated will be provided at the May 30 WCAC meeting.

Business asked what law criteria is used to make the decisions 608/609 expenditure and fund split decisions.

Bob's response was that most allocations are historical in nature and we've simply done them that way for years and years. Bob agreed that we need to take some time and ask ourselves if that is the way the allocation and splits should be done in the future. We also need to go into the cost allocation methodology which has been previously shared with the committee in order to explain exactly how the dollars are allocated and used.

Labor expressed that they are more interested in what the future criteria will be than the past. They would like to see something established so that when someone looks at these dollars as a funding source they realize there are certain criteria that must be met to be eligible for the funding. At the present time there are funds coming out that may not meet these future criteria, but before funding is stopped it will need to be determined where future funding can come from.

L&I made a commitment this session to Rep Conway and Rep Green to revisit the possibility of bringing back the group that used to meet to discuss evidenced based medicine. WA State Medical Association has agreed to discuss the possibility of bringing back this group. In the past the association and participating physicians donated their time and the agency was able to use the groups' expertise in various areas such as whether a particular technology device or treatment would be covered and the protocol for using that treatment if it was determined to be covered.

The department will be addressing the process that will be used to decide which items will go through the Governor's process and which ones can be dealt with within the agency. Bob reiterated that the agency has not established the committee with WSMA yet they are just willing to talk at this point. This will be discussed further at the next WCAC meeting.

Christine presented a timeline for developing 2007 legislation and asked for input from the committee. The timeline is aggressive as all Leg packages will need to be to the Governor's office by the end of August. If there is an area that the committee feels should be focused on, that information will need to be submitted by April 24. Gary will review and outline where the focus should be. Information will be presented at the May 30 WCAC meeting.

Final decision packages will be put together and handed out at the August 28 WCAC so the committee is aware of what will be presented to the Governor's Office.

Labor asked that the meeting on May 30th be extended to accommodate the growing agenda with the morning being for the committee and the afternoon to allow for full participation from Business and Labor Representatives.

Note: The May 30th meeting has been extended to 3:00 pm.

8. Finance Subcommittee – Bob Malooly

In order to create a more transparent workers' compensation fiscal management environment, Bob presented a plan to create a WCAC Finance Subcommittee. The subcommittee will be asked to provide input on a variety of fiscal issues such as the contingency reserve levels, discount rates and financial reporting. The vision is to have at least one member from business and labor who are members of the WCAC, but then bring in broader participation. The department is looking for a group of people willing to spend the time to understand these complex fiscal issues and to give the department advice on the decisions that have to be made.

Labor and business were each asked to submit three names to the department. Of the three names one should be a WCAC member.

9. Proposed 2007 Experience Rating Changes - Bill Vasek

Bill Vasek reviewed the current method of experience rating. He explained the problems with the current methodology: the current formula is difficult to understand; the credibility should be updated to increase the predictive accuracy of the experience factors; and the transition from the claim-free experience rating plan to the regular experience rating plan is difficult for many firms.

Three Proposed Changes for 2007:

1. Replace the current formula with a new formula which is easier to understand. The new formula would be "Credible Primary loss (plus) the credible excess loss (divided) the expected loss." The new formula is algebraically equivalent to the current formula.
2. Adjust the amount of credibility that we are actually giving for small firms and medium to large firms. This change will increase the credibility for small firms and decrease the credibility for medium to large firms this change will bring credibility weighting back into balance and satisfy a JCARC recommendation.
3. Reduce the effect of non-compensable claims in the experience factor calculation. With this change all non-compensable claims will be reduced by the lesser of \$1,390 or the original total cost of the claim when calculating the experience factor. This change together with increases in credibility will ease the transition between the claim-free and the regular experience rating plans for small firms.

Labor asked whether these changes would remove the incentives for keeping injured workers on salary.

The plan is to market the value of kept on salary far more aggressively to small and medium size firms that don't understand the process. The department wants

to redesign the rate notice so that it is much more informative for the employers so they have a better understanding of what is going on. The new representation of the formula will allow employers to see and understand this better. Next biennium we are going to be redesigning the services for the employer where they can better see what is going on with the classes. Employers will understand the incentives we have built into this program for safety, kept on salary, and early return to work.

At the present time they don't find out until it is too late. Once the opportunity to keep injured workers on salary is past, they wind up losing an employee because they filled the job and now you have an injured worker who is also an unemployed worker.

Business felt it was difficult to convince them to keep injured workers on salary for more than a certain amount of time because actuarially it just doesn't make sense and asked the following: If I am a new company and my experience rate is 1 for three years is there any different impact to a new organization versus one that has been in business for 97 years?

Bill responded that this proposal makes it more equitable for all firms. For new firms, as soon as there is one hour of experience in the experience period of that firm then they will get an experience factor calculated. For example, for 2007 we are going to be looking at 2003 through 2005 fiscal year experience. If they had experience in the first half of 2005 they will get an experience factor calculated in 2007.

Business asked if we are doing away with the 25% rule. Bill responded that we are still going to stick with the 25% cap rule, and that we will still apply to all other experience rating rules.

10. Pension Discount Rate and Pension Rule Making – Vickie Kennedy and Bill Vasek

Vickie handed out the Pension Rule Timeline. Cheri Ward and Vickie will be doing stakeholdering of actual text of the new Pension rules. If anyone is interested in knowing more about this or being involved in the stakeholdering process, please let Vickie or Cheri know.

Bill reviewed the pension tables and calculations.

Labor questioned why the 30 year Treasury Bond was not used as the benchmark.

The duration of the 20 year Treasury Bond is closer to the duration of the liabilities.

Labor questioned how the 6.5% discount rate was originally selected.

The 6.5% rate was set in 1987 and it has been kept for so long due the complex nature of making a change and the longer you wait the more difficult it is.

Changing the discount rate will have the greatest impact on self insured employers. They are going to have to contribute more cash to prefund their obligations. The department will be working with them to implement these changes. If we had been making adjustments similar to this policy on a continuous basis we would have avoided any large changes in the discount rate. Instead we would have been dialing down the discount rate a little bit every year. It is clear that the pension discount rate is currently too high.

11. Artificial Spinal Disk

Bill Struyk, of Johnson and Johnson notified the committee that the presentation they were expecting on the Charite Artificial Disk would not be taking place due to the presenter being unable to attend the meeting.

It was decided by the department that the Charite Artificial Disk (not being an approved treatment) be placed into rules due to severe safety concerns and early reports from the FDA. Medicare did a formal technology assessment and has also made the decision not to cover this treatment. Detailed summary of Medicare decision was included in package.

Labor asked if we are prepared to submit this to the technology review committee and, if so, why we are doing a rule prior to having the technology review committee make their assessment.

Bob responded that one reason for moving forward with rules is that it may very well be a long time before the committee addresses this issue and they may choose not to address the issue altogether because of Medicare's non-coverage decision. Bob also indicated that a rule was necessary due to the Roller decision. Without a rule, our non-coverage policy would be overturned on appeal.

Business asked when the Governor's committee is supposed to come on line.

The committee is legally formed on or near July 1, 2006. Once the committee is formed, it was pointed out that the committee members would need to be hired which could take months. When the committee finally does get up and running, it is statutorily limited to making 6 coverage decisions in the first year and 8 in the second. Coverage decisions will need to be prioritized across all agencies and based upon agency-specific criteria that have yet to be put in to rule. It was also noted that there was no guarantee that the Governor's committee would review coverage decisions the agency requested for review.

Bill Struyk asked if the department would be willing to explore coverage with evidence development.

Staff indicated that the department would be more than willing to explore coverage with a new study that applied to injured workers or a population like injured workers with degenerative disc disease 30 to 55 years old like most of the patients we see. And, if there was a clear indication of an improved outcome, we would reevaluate total non coverage and consider developing a guideline.

Bob further commented that if a study came out that says for a specified population this device really works, and it meets criteria that are good enough to make a decision, we would revisit our rule and not wait for Medicare to act on it.

Meeting Adjourned

Date	Time	Location	Notes
May 30	9 to Noon	Tukwila Training Room	
August 28	9 to Noon	Tumwater: S117 & S118	Date changed from August 21
December 4	9 to Noon	Tukwila Training Room	

Task	By Who	By When
Employer Services Program Manager Update	Bob Malooly	May 30 WCAC Meeting (if not sooner)
Update and overview of ORCA security	Catherine McDonald	May 30 WCAC Meeting
Overview of surgical-care- best-practice incentive program and list of participants	Roy Plaeger-Brockway	May 30 WCAC Meeting
Overview of agency's English as a Second Language efforts	Kim Contris	May 30 WCAC Meeting
Update on Employer Reporting Legislation (SHB 2537)	Sara Spiering	May 30 WCAC Meeting
Workers' Comp Funding Presentation (Overview of 608/609)	Bob Malooly	May 30 WCAC Meeting
Medical Advisory Committee Update	Bob Malooly	May 30 WCAC Meeting
Legislative Update	Christine Swanson	May 30 WCAC Meeting